

#### **IV. REMARKS**

In the Office Action dated October 29, 2008, the Examiner indicated that Claim 27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 USC §112, second paragraph, and claims 28-30 would be allowable if rewritten in independent form, including all the limitations of the base claim and any intervening claims. The applicants gratefully acknowledge the indication of Allowability. As discussed below, these amendments have been made.

#### **Drawing Objections**

The Examiner has objected to the drawings as not showing every feature of the invention specified in the claims. Specifically, claim 25 recites the channel in the first portion has a greater than semicircular cross-section, and the channel in the second portion has a less than semicircular cross-section, but none of these features are shown in the drawings. Applicant has now canceled claim 25, rendering this ground of rejection moot.

#### **Claim Rejections – 35 USC § 112**

The Examiner has rejected claims 25 and 27 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 has been canceled by Applicant and, therefore, this ground of rejection as to claim 25 is moot. With regard to claim 27, the Examiner states that claim 27 recites the channel having at least a semicircular cross-section, with an adhesive being used if the cross section is of a substantially semicircular cross-section. The Examiner feels that this makes that claim indefinite since it is previously recited that the channel is at least semicircular cross-section.

As indicated in the "Examiner Interview Summary" portion of the present amendment, the language agreed to with the Examiner has been inserted into Claim 27, and it is respectfully requested that this claim be allowed.

With regard to claim 28, this claim has been rewritten in independent form, including all the limitations of the base claim, and any intervening claims. The examiner indicated that claim 28 would be allowable if rewritten in this form. The allowance of this claim is courteously requested.

With regard to claims 29 and 30, these claims have now been amended to depend on the rewritten claim 28, and are, thus, also allowable.

#### Claim Rejections – 35 USC § 103

The Examiner has rejected claims 20-24, 36, and 59-62 as is being obvious in view of US 6001081 to Collen. The Examiner states that the patent to Collen discloses a tubing device comprising a tubing support comprising, when closed, a curvilinear channel of substantially circular cross-section disposed therein for receiving and holding

a piece of tubing (40), wherein the tube support comprises a first portion (12), and a second portion (14), with each portion comprising a channel of semicircular cross-section and being connected by hinge (16). The channels are configured to align with each other to hold the tubing between them. Figure 4 discloses that when the tube support is closed, the channels are configured to form a cylindrical channel when aligned thus forming a curvilinear channel of substantially circular cross-section. The Examiner further states that Collen does not specifically disclose the channel contacting the piece of tubing substantially around its entire periphery. The Examiner points out, however, that Collen does disclose that channel dimensions as well as the radius of curvature may be changed to accommodate different sized tubing.

As pointed out in the Examiner Interview of January 23, 2009, Applicant strenuously disagrees with the Examiner's statement that "Additionally the size of the tubing may increase to a diameter at which time the channels would contact the tubing substantially around the entire periphery". As is clearly pointed out at column 2, lines 45 – 60 of the reference, and shown in Fig. 4, it is a key feature of the Collen device that there must be "more than sufficient clearance to accommodate this tubing". To eliminate this clearance would materially affect the operation of the Collen device, and this is impermissible in making a ground of rejection. Further, as pointed out in the telephone interview with Examiner Brinson, Collen ('081) is holding the spigot 38, not the tube 40. Therefore, it is respectfully submitted that the rejection of claims 20 – 24

as being obvious in view of Collen is in error, and claims 20 – 24 are allowable over Collen.

With regard to claim 36, the above arguments are repeated, and it is noted that claim 36 is a dependent claim which depends from claim 24 which, as pointed out above, is allowable.

With regard to claim 59, the above arguments are repeated, and it is pointed out that a weight-bearing tubing apparatus is claimed. Collen does not envision a weight bearing apparatus, as the device is intended to be taped to a patient's hand, as illustrated in Fig. 5.

With regard to claim 60, the above arguments are repeated, and a channel of other than U-shape is claimed. This is nowhere shown or suggested in Collen ('081).

With regard to claim 61, a channel which is horseshoe shaped is claimed. While the term "horseshoe" is not specifically used in the specification, it is inherent in the disclosure as being clearly shown in the drawings in at least Figs. 10, 11, 11A, 12 and 20. This is not shown in Collen ('081).

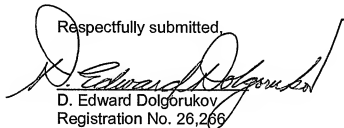
With regard to claim 62, a channel which is at least partially S-shaped is claimed. Support for this claim language can be found at least in ¶ 73 of the published application. A channel which is at least partially S-shaped is nowhere shown in Collen (081).

Response to Amendment

The Examiner has pointed out that the only previous amendment to the claims was an addition to claim 27. Applicant had stated that claim 27 was rewritten to include all of the limitations of claim 15 and 16. The Examiner points out that this is not entirely accurate because claim 15 included a limitation on the channel that was not placed in claim 27. Applicant has now added to this limitation to claim 27 and, therefore, claim 27 is allowable.

In view of the above amendments, and the remarks explanatory thereof, a favorable reconsideration of the present application, and the passing of this case do issue, is courteously requested.

Respectfully submitted,



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